IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.205 OF 2005

Girni Kamgar Sangharsh Samiti Petitioner

versus

The Khatau Makanji Spinning and Weaving Co. Ltd. and others Respondents

Ms.Gayatri Singh for petitioner.

Mr.C.U.Singh with Ms.Gitanjali Prabhu i/by Gagrat & Co. for respondents 1 and 2.

Ms.P.A.Purandare for respondents 5 to 10.

Ms.Sophia Pinto i/by M.Dhruva & Co. for respondent no.3.

Ms.Chandana Radia-Salgaonkar for respondent no.12

Mr.Shailesh Khatri with T.N.Subramanium i/by B.Desai & Co. for respondent no.6.

Ms.S.S.Joshi i/by P.K.Shroff for respondent no.7

Ms.N.D.Buch with D.S.Dholakia for respondent no.13

Mr.Suresh Kumar for respondent no.9

Mr.Rajiv Mane for respondents 8 and 11.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 05th April 2005

PC :

1. Heard learned counsel for all parties.

Though there are various prayers in this petition, some of the grievances which are raised in the petition can be taken care of in view of the affidavits which are filed by some of the respondents.

2. As far as apprehension of petitioners that the Mill Company may dispose off the property or create third party rights is concerned, an affidavit giving an undertaking has been filed by respondent no.2. She has filed this undertaking without prejudice to the reservation of respondents 1 and 2 with respect to maintainability of this petition. However, Mr.Singh for respondents 1 and 2 states that the undertaking is unconditional. We accept this undertaking whereby respondents 1 and 2 will not sell or alienate the property of Mill Company or will not create third party rights until due process is followed and which will mean an appropriate order of AAIFR or of the Company Judge.

3. The petition was amended and in view of the present difficulties of the workmen and other employees, an additional prayer was added namely prayer clause O(1) for a Writ of Mandamus to

respondent no.9 that he should release the share of employer's contribution to the workers without obtaining resignations from them. Enforcement Officer (Legal) from the office of respondent no.9 has filed an affidavit in reply. We have taken it on record. However, Mr.Singh though appearing for respondent no.1 Mill Company has fairly pointed out that under Para 68(H)(2) of the Employees Provident Fund Scheme, 1952, where a factory or establishment remains locked up or closed down for more than six months, the Commissioner or the officer authorised by the Commissioner has a power to release Provident Fund amount to the employees to the extent of 100% of the employer's total contribution including interest thereon. Ms.Buch appearing for respondent no.3 which is representative union also supports this prayer. In the circumstances although the Provident Fund office has some claim against respondent no.1, there is no reason as to why the amounts which are accumulated towards contribution made by the employer should not be released to the employees concerned more particularly in view of the fact that Mill Company has remained closed and not working for very long time. In the circumstances we direct respondent no.9 to entertain all such

application/s which may be made by the employees of respondent no.1 mill company as and when they make for release of Provident Fund amount contributed by the employer and which is payable to each of the employees along with interest accrued thereon. Ms.Singh makes a statement that she is going to advise the workmen to keep 10% balance in the account. That is for each of the employees to decide. They may either withdraw the entire amount or keep 10% or otherwise. he concerned employee has to make necessary applications. We expect respondent no.9 to clear these amounts at the earliest after due verification by the mill company. He will as well release amounts in case there is death of the employee, as per relevant rules. The amounts will be released within four weeks from the receipt of applications.

4. The third grievance of the petitioner is regarding the fire which broke in the premises of the mill and investigation therein was sought and affidavit in reply has been filed by Mr.Shinde, Deputy Chief Fire Officer placing on record the investigation report. We have gone through the report and we do not propose to make any further observations thereon.

5. The appeal preferred before the AAIFR has been pending for very long time. We request the Appellate Authority to hear and decide the same expeditiously. All counsel appearing for various parties herein state that they equally are keen to see that the appeal is heard at the earliest. All submissions raised in the petition will be available to the petitioners wherever they are required to be raised and wherever they are permissible to be raised. Petition disposed off.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)